



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/975,006	10/10/2001	David P. Aschenbeck	25019A	8542

22889 7590 03/16/2004

OWENS CORNING  
2790 COLUMBUS ROAD  
GRANVILLE, OH 43023

EXAMINER
----------

WATKINS III, WILLIAM P

ART UNIT	PAPER NUMBER
----------	--------------

1772

DATE MAILED: 03/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/975,006	ASCHEBECK ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	William P. Watkins III	1772	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 November 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) 1-7, 11-52, 54, 56 and 57 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-10, 53 and 55 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |



**DETAILED ACTION**

1. This application contains claims 21-52 drawn to inventions nonelected with traverse in the paper filed 16 July 2003. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

2. The 103 rejection over Iwasaki et al. as modified in section 3 of the detailed portion of the office action mailed 16 October 2003 is withdrawn in view of applicant's arguments that there is no teaching of the use of a glass fiber mat as is now claimed.

3. The 102 rejection using Miller et al. in section 5 of the office action mailed 16 October 2003 is withdrawn in view of applicant's argument's as to Miller et al. not expressly teaching a filler amount of 30% to 75%. The reference has been used in a new ground of rejection given below. Applicant's arguments regarding the protective coating not meeting the claim limitations are not accepted by the examiner and will be commented on below.



Art Unit: 1772

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 8-10 and 53 and 55 are rejected under 35 U.S.C. 103(a) as being obvious over Miller et al. (WO 00/40794) in view of Vermilion et al. (U.S. 5,494,728).

Miller et al. teaches an improved weatherability upper layer in a 60 day test (page 18, lines 10-30). The weatherability is improved by a top coating layer on the top asphalt portion that may cover the entire surface of the top portion of the roofing material (page 9, lines 1-5). The asphalt coating may contain fillers (page 6, lines 25-30). The coated web is preferably made of glass fibers (page 6, lines 5-10). Vermilion et al. teaches the use of fillers in conventional asphalt roofing material in the 65% weight range (col. 1, lines 25-35). The instant invention claims the use of a coating asphalt with a weather resistant top portion and a filler loading of 30% to



75%. It would have been obvious to one of ordinary skill in the art to make use an amount of filler in the asphalt of Miller et al. in the conventional weight percent amount of 65% in order to have normal performance of the coating because of the teachings of Vermilion that this is an accepted value.

6. Claims 8-10 and 53 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schult (U.S. 4,911,975).

Schult teaches a top coating on a roofing product that gives enhanced weather ability (col. 2, lines 10-15). The coating may be bitumen based with a level of fillers in the 50% weight range (col. 4, lines 55-60). The top layer may have a thickness of .2 to .25 centimeters (col. 4, line 34). The center portion may be a glass mat and be penetrated by the coating layers (col. 4, lines 40-42, col. 3, lines 45-50). The bottom coating layer may have a filler loading of 10% to 20% by weight (col. 2, line 27). The instant invention claims a top coating layer with an increased weather ability and a central glass fabric layer and a bottom coating of different weather ability with the filler loading of the asphalt based coating being in the 30% to 75% weight range. It would have been obvious to one of ordinary skill in the art to select the option



Art Unit: 1772

of equally thick top and bottom layers both with bitumen or asphalt based materials on a glass fiber center mat from the various combinations of options taught by Schult in order to practice the invention of Schult. The average of filler at 50% by weight in the top coating with filler at 20% weight in the bottom coating for layers being of equal thickness would give an average of over 30% weight filler in the total asphalt based coating of the central web, which meets the instant claim language.

7. Applicant's arguments with respect to claims 8-10, 53 and 55 have been considered but are moot in view of the new ground(s) of rejection.

Regarding features of Miller et al. still relied upon in the new grounds of rejection, applicant argued that the top protective layer was not the same as the instant asphalt top coating that had higher weather ability than the bottom coating and that the claim language of the entire top portion having weather ability was not met by the top layer of Miller et al. The instant claim language is open in both claims 55 and 8 and does not exclude the top portion from having an upper layer that is a top coating that may differ in composition. Regarding the



Art Unit: 1772

"entire top portion" language the examiner constructs this language as applying to entire surface of the top portion as there is no explicit definition of "entire top portion" in the specification (Figure 2 and page 12, lines 3-12 of the instant specification are an illustration of an embodiment and not a definition) and art such as Miller et al. refers to the entire top surface area that is actually exposed to weather as being of interest to one of ordinary skill in the art. The entire top surface of the top portion of Miller et al. being of high weather ability meets this construction.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will



Art Unit: 1772

expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Watkins III whose telephone number is 571-272-1503. The examiner works an increased flex time schedule, but can normally be reached Monday through Friday, 11:30 A.M. through 8:00 P.M. Eastern Time. The examiner returns all calls within one business day unless an extended absence is noted on his voice mail greeting.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



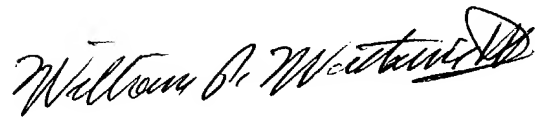
Application/Control Number: 09/975,006

Page 8

Art Unit: 1772

WW/ww

March 6, 2004

A handwritten signature in black ink, reading "William P. Watkins III". The signature is written in a cursive style with a large, stylized "W" and "I".

**WILLIAM P. WATKINS III  
PRIMARY EXAMINER**